APPENDIX A

ILLINOIS USE TAX ACT

Approved: July 14, 1955—Effective: August 1, 1955

An Act in relation to a tax upon the privilege of using tangible personal property in this State, to make appropriations to the Department of Revenue and to the Secretary of State in connection therewith and to make certain incidental but necessary corrollary changes as an enforcement aid in the Uniform Motor Vehicle Anti-Theft Act, approved May 11, 1933, as amended, by amending Section 4 of said Uniform Motor Vehicle Anti-Theft Act.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 1. This Act shall be known and may be cited as the "Use Tax Act".

Section 2. "Use" means the exercise by any person of any right or power over tangible personal property incident to the ownership of that property, except that it shall not include the sale or use for demonstration by him of that property in any form as tangible personal property in the regular course of business. "Use" shall not mean the interim use of tangible personal property by a retailer before he sells such tangible personal property and shall not mean the physical incorporation of tangible personal property, as an ingredient or constituent, into

other tangible personal property (a) which is sold in the regular course of business or (b) which the person incorporating such ingredient or constituent therein has undertaken at the time of such purchase to cause to be transported in Interstate Commerce to destinations outside the State of Illinois.

"Purchase at retail" means the acquisition of the ownership of, or title to, tangible personal property, through a sale at retail.

"Purchaser" means any person who through a sale at retail acquires the ownership of or title to the tangible personal property that is sold.

"Sale at retail" means any transfer of the ownership of, or title to, tangible personal property to a purchaser, for use, and not for resale, and for a valuable consideration. Transactions whereby the possession of the property is transferred but the seller retains the title as security for payment of the selling price shall be deemed to be sales.

"Selling price" means the consideration paid for a sale valued in money whether received or paid in money or otherwise, including cash, credits, service and property of every kind or nature and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever, but shall not include interest or finance

charges which appear as separate items on the bill of sale or sales contract and shall not include charges that are added to prices by sellers on account of the seller's tax liability under the Retailers' Occupation Tax Act, or on account of the seller's duty to collect, from the purchaser, the tax that is imposed by this Act, or on account of the seller's tax liability under the Municipal Retailers' Occupation Tax Act.

"Department" means the Department of Revenue.

"Person" means any natural individual, firm, partnership, association, joint stock company, joint adventure, public or private corporation, or a receiver, executor, trustee, conservator or other representative appointed by order of any court.

"Retailer" means and includes every person engaged in the business of selling tangible personal property for use, and not for resale in any form.

The isolated or occasional sale of tangible personal property at retail by a person who does not hold himself out as being engaged (or who does not habitually engage) in selling such tangible personal property at retail does not make such person a retailer hereunder; provided that any person who is engaged in a business which is not subject to the tax imposed by the Retailers' Occupation Tax Act because of involving the sale of or a contract to sell

real estate or a construction contract to improve real estate, but who, in the course of conducting such business, transfers tangible personal property to users or consumers in the finished form in which it was purchased, and which does not become real estate, under any provision of a construction contract or real estate sale or real estate sales agreement entered into with some other person arising out of or because of such nontaxable business, shall be considered to be a retailer to the extent of the value of the tangible personal property so transferred. If, in such a transaction, a separate charge is made for the tangible personal property so transferred, the value of such property, for the purposes of this Act, shall be the amount so separately charged, but not less than the cost of such property to the transferor; if no separate charge is made, the value of such property, for the purposes of this Act, shall be the cost to the transferor of such tangible personal property.

"Retailer maintaining a place of business in this State", or any like term, shall mean and include any retailer having or maintaining within this State, directly or by a subsidiary, an office, distribution house, sales house, warehouse or other place of business, or any agent operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent is located here permanently or temporarily,

or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

Section 3. A tax is imposed upon the privilege of using in this State tangible personal property purchased at retail on and after August 1, 1955, from a retailer. Until and including June 30, 1957, such tax is at the rate of 2½% of the selling price of such property; and after June 30, 1957; at the rate of 2% of such selling price.

The tax hereby imposed shall be collected from the purchaser by a retailer maintaining a place of business in this State or a retailer authorized by the Department pursuant to Section 6 hereof, and remitted to the Department, pursuant to the provisions of Section 9 hereof.

The tax hereby imposed and not paid to a retailer pursuant to the preceding paragraph of this Section shall be paid to the Department directly by any person using such property within this State, pursuant to the provisions of Section 10 hereof.

Retailers shall collect the tax from users by adding the tax to the selling price of tangible personal property, when sold for use, in the manner prescribed by the Department. The Department shall have the power to adopt and promulgate reasonable rules and regulations for the adding of such tax by retailers to selling prices by prescribing bracket systems for the purpose of enabling such

retailers to add and collect, as far as practicable, the amount of such tax.

The tax herein imposed shall not apply to the State of Illinois, any county, political subdivision or municipality thereof, or to any instrumentality or institution of any of the governmental units aforesaid, or to any corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious or educational purposes, when using tangible personal property purchased at retail.

To prevent actual or likely multistate taxation, the tax herein imposed shall not apply to the use of tangible personal property in this State under the following circumstances:

(a) The use, in this State, of tangible personal property acquired outside this State by a non-resident individual and brought into this State by such individual for his or her own use while temporarily within this State or while passing through this State; —

(b) the use, in this State, of tangible personal property which is acquired outside this State and which is moved into this State for use as rolling stock moving in interstate commerce;

(c) the use, in this State, of tangible personal property which is acquired outside this State and caused to be

brought into this State by a person who has already paid a tax in another state in respect to the sale, purchase or use of such property, to the extent of the amount of such tax so paid in such other state;

(d) the temporary storage, in this State, of tangible personal property which is acquired outside this State and which, subsequent to being brought into this State and stored here temporarily, is used solely outside this State or physically attached to or incorporated into other tangible personal property that is used solely outside this State.

If the seller of tangible personal property for use would not be taxable under the Retailers' Occupation Tax Act despite all elements of the sale occurring in Illinois, then the tax imposed by this Act shall not apply to the use of such tangible personal property in this State.

Section 4. Evidence that tangible personal property was sold by any person for delivery to a person residing or engaged in business in this State shall be prima facie evidence that such tangible personal property was sold for use in this State.

Section 5. Every retailer maintaining a place of business in this State and making sales of tangible personal property for use in this State (whether such sales are made within or without this State) shall, when collecting the tax as provided in Section 3 of this Act from the purchaser,

give to the purchaser (if demanded by the purchaser) a receipt therefor in the manner and form prescribed by the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may relate. Each such retailer shall list with the Department the names and addresses of all his agents operating in this State and the location of any and all of his distribution or sales houses, offices or other places of business in this State.

Section 6. A retailer maintaining a place of business in this State, if required to register under the Retailers' Occupation Tax Act, need not obtain an additional Certificate of Registration under this Act, but shall be deemed to be sufficiently registered by virtue of his being registered under the Retailers' Occupation Tax Act. Every retailer maintaining a place of business in this State, if not required to register under the Retailers' Occupation Tax Act, shall apply to the Department (upon a form prescribed and furnished by the Department) for a Certificate of Registration under this Act. In completing such application, the applicant shall furnish such information as the Department may reasonably require. Upon approval of an application for Certificate of Registration, the Department shall issue, without charge, a Certificate of Registration to the applicant. Such Certificate of Registration shall be displayed at the address which the applicant states in his applica-

tion to be the principal place of business or location from which he will act as a retailer in this State. If the applicant will act as a retailer in this State from other places of business or locations, he shall list the addresses of such additional places of business or locations in this application for Certificate of Registration, and the Department shall issue a Sub-Certificate of Registration to the applicant for each such additional place of business or location. Each Sub-Certificate of Registration shall be conspicuously displayed at the place for which it is issued. Such Sub-Certificate of Registration shall bear the same registration number as that appearing upon the Certificate of Registration to which such Sub-Certificates relate. Where a retailer operates more than one place of business which is subject to registration under this Section and such businesses are substantially different in character or are engaged in under different trade names or are engaged in under other substantially dissimilar circumstances (so that it is more practicable, from an accounting, auditing or bookkeeping standpoint, for such businesses to be separately registered), the Department may require or permit such person to apply for and obtain a separate Certificate of Registration for each such business or for any of such businesses instead of registering such person, as to all such businesses, under a single Certificate of Registration supplemented by related Sub-Certificates of Registration. No Certificate of Regis-

tration shall be issued to any person who is in default to the State of Illinois for moneys due hereunder.

The Department may, in its discretion, upon application, authorize the collection of the tax herein imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the Department, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect such tax. When so authorized, it shall be the duty of such retailer to collect the tax upon all tangible personal property sold to his knowledge for use within this State, in the same manner and subject to the same requirements, including the furnishing of a receipt to the purchaser (if demanded by the purchaser), as a retailer maintaining a place of business within this State. The receipt given to the purchaser shall be sufficient to relieve him from further liabiltiy for the tax to which such receipt may refer. Such permit may be revoked by the Department as provided herein.

Section 7. It is unlawful for any retailer to advertise or hold out or state to the public or to any purchaser, consumer or user, directly or indirectly, that the tax or any part thereof imposed by Section 3 hereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold, or if added that it

or any part thereof will be refunded other than when the retailer refunds the selling price and tax because of the merchandise's being returned to the retailer or other than when the retailer credits or refunds the tax to the purchaser to support a Claim for Credit under the Retailers' Occupation Tax Act. Any person violating any of the provisions of this Section within this State shall be guilty of a misdemeanor and subject to the penalties provided in this Act.

Section 8. The tax herein required to be collected by any retailer pursuant to this Act, and any such tax collected by any retailer shall constitute a debt owed by the retailer to this State, except when such retailer is relieved of the duty of remitting such tax to the Department by virtue of his being required to pay the tax imposed by the Retailers' Occupation Tax Act upon his gross receipts from the same transaction.

Section 9. Each retailer required or authorized to collect the tax herein imposed shall pay to the Department the amount of such tax (except as otherwise provided), on or before the 15th day of the month following the calendar month during which such tax was collected. The first such remittance shall be due on or before September 15, 1955, for the tax collected during the preceding calendar month, but a retailer need not remit that part of any tax collected

by him to the extent that he is required to remit and does remit the tax imposed by the Retailer's Occupation Tax Act with respect to the sale of the same property.

Where such tangible personal property is sold under a conditional sales contract, or under any other form of sale wherein the payment of the principal sum, or a part thereof, is extended beyond the close of the month for which the return is filed, the retailer, in collecting the tax (except when such a procedure would make compliance with Section 4 of the Uniform Motor Vehicle Anti-Theft Act, approved May 11, 1933, as amended, impossible or impracticable), may collect, for each month, only the tax applicable to that part of the selling price actually received during such month.

On or before the 15th day of each month, such retailer shall also file a return for the preceding calendar month, the first such return being due by September 15, 1955, covering the preceding calendar month.

Where a retailer collects the tax with respect to the selling price of tangible personal property which he sells and the purchaser thereafter returns such tangible personal property and the retailer refunds the selling price thereof to the purchaser, such retailer shall also refund, to the purchaser, the tax so collected from the purchaser. When filing his return for the month in which he refunds

such tax to the purchaser, the retailer may deduct the amount of the tax so refunded by him to the purchaser from any other use tax which such retailer may be required to pay or remit to the Department, as shown by such return, provided that the amount of the tax to be deducted shall previously have been remitted to the Department by such retailer. If the retailer shall not previously have remitted the amount of such tax to the Department, he shall be entitled to no deduction hereunder upon refunding such tax to the purchaser.

Any retailer filing a return hereunder shall also include (for the purpose of paying tax thereon) the total tax covered by such return upon the selling price of tangible property purchased by him at retail from a retailer, but as to which the tax imposed herein was not collected from the retailer filing such return, and such retailer shall remit the amount of such tax to the Department when filing such return.

If experience indicates such action to be practicable, the Department may prescribe and furnish a combination or joint return which will enable retailers, who are required to file returns hereunder and also under the Retailers' Occupation Tax Act, to furnish all the return information required by both Acts on the one form.

Where the retailer has more than one business registered with the Department under separate registration hereunder, such retailer shall not file each return that is due as a single return covering all such registered businesses, but shall file separate returns monthly for each such registered business.

In his return, the retailer shall determine the value of any consideration other than money received by him in connection with the sale of any tangible personal property in the course of his business and he shall include such value in his return. Such determination shall be subject to review and revision by the Department in the manner hereinafter provided for the correction of returns.

All moneys received by the Department hereunder shall be paid into the General Revenue Fund of the State Treasury.

Section 10. When tangible personal property is purchased from a retailer for use in this State by a purchaser who did not pay the tax herein imposed to the retailer, and who does not file returns with the Department as a retailer under Section 9 of this Act, such purchaser (by the 15th day of the month following the calendar month in which such purchaser makes any payment upon the selling price of such property) shall file a return with the Department and pay the tax due upon that portion of the selling price

so paid by the purchaser during the preceding calendar month. Such return and payment from the purchaser shall be submitted to the Department sooner than the 15th of the month after the month in which the purchase is made to the extent that that may be necessary in order to secure the title to a motor vehicle under Section 4 of the Uniform Motor Vehicle Anti-Theft Act, approved May 11, 1933, as amended. To the extent to which they may be pertinent, all of the provisions of Section 9 with reference to returns and payments shall be applicable to the returns and payments herein required. When a purchaser pays a tax herein imposed directly to the Department, the Department (upon request therefor from such purchaser) shall issue an appropriate receipt to such purchaser showing that he has paid such tax to the Department. Such receipt shall be sufficient to relieve the purchaser from further liability for the tax to which such receipt may refer.

Section 11. Every retailer required or authorized to collect taxes hereunder and every person using in this State tangible personal property purchased at retail from a retailer on or after the effective date hereof shall keep such records, receipts, invoices and other pertinent books, documents, memoranda and papers as the Department shall require, in such form as the Department shall require. For the purpose of administering and enforcing the provisions hereof, the Department, or any officer or employee

of the Department designated, in writing, by the Director thereof, may hold investigations and hearings concerning any matters covered herein and may examine any books, papers, records, documents or memoranda of any retailer or purchaser bearing upon the sales or purchases of tangible personal property, the privilege of using which is taxed hereunder, and may require the attendance of such person or any officer or employee of such person, or of any person having knowledge of the facts, and may take testimony and require proof for its information.

Section 12.—All of the provisions of Sections 2b, 4 (except that the time limitation provisions shall run from the date when the tax is due rather than from the date when gross receipts are received), 5 (except that the time limitation provisions on the issuance of proposed assessments shall run from the date when the tax is due rather than from the date when gross receipts are received), 5a, 5b, 5c (with the authority contained therein for the releasing of liens against retailers being applicable to the same extent and on the same conditions in this Act to the releasing of liens against users as well as to the releasing of liens against retailers), 5d, 5e, 5f (with the provision contained therein concerning the inclusion of the name of the "retailer" in a published notice and the provision contained therein requiring notice by registered mail to the "retailer" being applicable in this Act also to a user where the property

to which the lien applies belongs to a user), 5g, 7, 8, 9, 10, 11, 12 and 12½ in effect on the effective date of this Act, as subsequently amended, which are not inconsistent with this Act, shall apply, as far as practicable, to the subject matter of this Act to the same extent as if such provisions were included herein.

Section 13. Whenever any retailer not maintaining a place of business in this State, to whom a permit to collect the tax hereby imposed has been issued pursuant to Section 6 hereof, fails to comply with any of the provisions hereof or any orders, rules or regulations of the Department prescribed and adopted hereunder, or when the Department considers the security furnished by such retailer to be inadequate or considers that the tax can be collected more effectively from persons using such property in this State, the Department may, upon notice and hearing as herein provided, by order revoke the permit issued to such retailer. No order authorized by this Section shall be made until the retailer is given an opportunity to be heard and to show cause why such order shall not be made, and he shall be given at least 7 days' notice of the time, place and purpose of such hearing. The Department shall have the power in its discretion to issue a new permit pursuant to Section 6 hereof after such revocation.

Section 14. Any person subject to the provisions hereof who fails to file a return, or who violates any other provi-

sion of Section 9 or Section 10 hereof, or who fails to keep books and records as required herein, or who files a fraudulent return, or who wilfully violates any rule or regulation of the Department for the administration and enforcement of the provisions hereof, or any officer or agent of a corporation subject hereto who signs a fraudulent return filed on behalf of such corporation, or any person who violates any of the provisions of Sections 3, 5 or 7 hereof, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25.00 nor more than $5,000.00, or be imprisoned in the county jail for not less than 1 month nor more than 6 months, or be both so fined and imprisoned in the discretion of the court.

Any person who violates any provision of Section 6 hereof is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25.00 nor more than $500.00, or be imprisoned in the county jail not more than 6 months, or be both so fined and imprisoned, in the discretion of the court. Each and every day any such person is engaged in the business in violation of said Section 6 shall constitute a separate offense.

This Section shall not apply if the violation in a particular case also constitutes a criminal violation of the Retailers' Occupation Tax Act.

Section 15. The tax herein imposed shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof.

Section 16. Appropriation to Department of Revenue, omitted.

Section 17. Appropriation to Secretary of State, omitted.

Section 18. If any clause, sentence, Section, provision or part of this Act or the application thereof to any person or circumstance shall be adjudged to be unconstitutional, the remainder of this Act or its application to persons or circumstances other than those to which it is held invalid, shall not be affected thereby. In particular, if any provision which exempts or has the effect of exempting some class of users or some kind of use from the tax imposed by this Act should be held to constitute or to result in an invalid classification or to be unconstitutional for some other reason, such provision shall be deemed to be severable with the remainder of this Act without said provision being held constitutional.

APPENDIX B

(All citations are to Commerce Clearing House All State Tax Service)

List of states which have use taxes that complement taxes on intrastate retail selling, and that require the seller to collect such tax from the purchaser (sometimes without qualification and sometimes with the qualification that this shall be done to the extent that it is possible to be done):

Alabama	CCH, Page 6231, Paragraph 63-012
Arizona	CCH, Page 6318, Paragraph 63-033
Arkansas	CCH, Page 6144, Paragraph 63-001
California	CCH, Page 6355, Paragraph 63-001
Colorado	CCH, Page 9628, Paragraph 96-034
Connecticut	CCH, Page 6171, Paragraph 63-005
Florida	CCH, Page 6111, Paragraph 64-150
Georgia	CCH, Page 6145, Paragraph 63-012
Iowa	CCH, Page 6157, Paragraph 60-425
Kansas	CCH, Page 6165, Paragraph 63-001
Louisiana	CCH, Page 6165, Paragraph 63-002
Maine	CCH, Page 6243, Paragraph 63-020
Maryland	CCH, Page 6151, Paragraph 60-401
Michigan	CCH, Page 6031, Paragraph 60-160
Mississippi	CCH, Page 6257, Paragraph 63-020
Nevada	CCH, Page 6355, Paragraph 63-002
New Mexico	CCH, Page 6262, Paragraph 63-026
North Carolina	CCH, Page 9377, Paragraph 92-702
North Dakota	CCH, Page 6063, Paragraph 63-001
Ohio	CCH, Page 6267, Paragraph 63-020
Pennsylvania	CCH, Page 9699-8, Paragraph 97-552
Rhode Island	CCH, Page 6174, Paragraph 63-030
Tennessee	CCH, Page 6183, Paragraph 63-002
Utah	CCH, Page 6221, Paragraph 63-001
Washington	CCH, Page 6219, Paragraph 63-002

West Virginia .....CCH, Page 6221, Paragraph 63-001
Wyoming .....CCH, Page 6187, Paragraph 63-021
Page 9363, Paragraph 93-036

List of states which have use taxes that complement taxes on intrastate retail selling, and that do not require (but do specifically authorize) the seller to collect such tax from the purchaser:

South Carolina .....CCH, Page 6169, Paragraph 63-025
South Dakota .....CCH, Page 9413, Paragraph 96-912
Page 6093, Paragraph 63-003